HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A. [c] No.91 of 2007

APPELLANT Hemant.

Versus

RESPONDENTS Smt. Jantri Bai & ors

POST FOR JUDGMENT ON 20th July, 2007

Sd/-
Dhirendra Mishra
Judge

(32)

HIGH COURT OF CHHATTISGARH AT BILASPUR

M. A. [c] NO. 91 OF 2007

APPELLANT Non-applicant No.2	Hemant, S/o. Tilakchand Katakwar, Aged about 45 years, Occupation Agriculture & Saw Mill, R/o. Sevtapara, Dongargaon, Tehsil Dongargaon, District Rajnandgaon (CG)
Versus	
RESPONDENTS Claimants	1. Smt. Jantri Bai, W/o. Gopal Ram Dewangan, Aged about 43 years, Occupation House Wife. 2. Ajay Kumar, S/o. Gopal Ram Dewangan, Aged about 28 years 3. Tirath Ram, S/o. Gopal Ram Dewangan, Aged about 26 years 4. Rajendra Kumar, S/o. Gopal Ram Dewangan, Aged about 22 years Respondents No. 1 to 4 are R/o. Sevtapara, Dongargaon, Tehsil Dongargaon, District Rajnandgaon (CG)
RESPONDENT Non-claimant no.1	5. Hemlal, S/o. Preetram Sahu, Aged about 28 years, Occupation Agriculture, R/o. village Kohka, Police Station Dongargaon, District Rajnandgaon (CG)

Present:

Mr. H.S. Patel, Advocate for the appellant.
Mr. N.P. Koshta, Advocate for respondents No.1 to 4.
Mr. P.R. Patankar, Advocate for respondent No.5.

J U D G M E N T

(Delivered on 20.7.2007)

Dhirendra Mishra, J

1) Appellant/non-applicant No.2 has preferred this appeal against the award dated 9.10.2006 passed by the Motor Accident Claims Tribunal, Rajnandgaon in Claim Case No.18/06 whereby learned Claims Tribunal has awarded a sum of Rs.1,95,000/- as compensation to the claimants/ respondent No.1 to 4 herein, legal representatives of deceased Gopalram,

(33)

who died on 26.4.2005 as a result of motor vehicle accident involving motorcycle number CG08-ZH-0407 driven by respondent No.5/non-applicant No.1 and the appellant/non-applicant No.2 has been saddled with the liability to satisfy the award simply because he happens to be the registered owner of the vehicle. The parties herein shall be referred as per the description given in the claims tribunal.

2) From perusal of the record of the claims tribunal it appears that initially the claimants had preferred a petition before the tribunal arraying non-applicant No.1-Hemlal as the owner of vehicle. However, non-applicant No.1 has denied the ownership of offending vehicle and stated that Hemant Katakwar is the owner of offending vehicle, this fact was known to the claimants even then the petition has been filed in collusion with said Hemant Katakwar without arraying him. After reply of the non-applicant No.1 the claimants have amended the claim petition and arrayed the appellant herein as non-applicant No.2 in the claim petition describing him as the owner of the vehicle.

3) The non-applicant No.2 in his written statement denied the ownership of the vehicle and stated that the motorcycle was sold by him to non-applicant No.1 in the month of September, 2004 and also delivered the possession of the vehicle along with necessary documents for transfer of the vehicle to non-applicant No.1 and in fact, non-applicant No.1 was the owner of the vehicle. It was pleaded that one Ashok Kumar Lodha is the witness of the fact that the motorcycle was transferred from non-applicant No.2 to non-applicant No.1 and possession was delivered.

4) Learned claims tribunal passed the impugned award with a finding that the offending vehicle was being driven by non-applicant No.1 rashly & negligently and thereby caused accident resulting in death of Gopalram, non-applicant No.2 is the owner of the vehicle and accordingly, an award of Rs.1,95,000/- was passed in favour of the claimants with interest @ 9% p.a. from the date of filing of the application i.e. 11.7.2005. It was further held that non-applicant No.1 & 2 shall be jointly and severally liable to satisfy the award.

(34)

5) Learned counsel for the non-applicant No.2 submits that the non-applicant No.2 has sold the vehicle to non-applicant No.1 for a consideration of Rs.10,000/-in the month of September, 2004. The transaction was finalized in the presence of Ashok Kumar, he has handed over the papers to Hemlal and he had applied to the R.T.O. for transfer of the vehicle in the month of May, 2005 vide Ex.D-1. In the F.I.R. also Hemlal has been shown as the owner of the vehicle. R.C. Book of the offending vehicle was in possession of Hemlal and the same was seized from him vide seizure memo of Ex.P-3. Non-applicant No.2 has also filed the affidavit of Ashok Kumar before the tribunal in which said Ashok Kumar has stated that non-applicant No.2 has sold his motorcycle to Hemlal Sahu through him and after the sale the vehicle was handed over to Hemlal along with original papers and necessary documents for transfer.

Relying upon the judgments in the matters of **Balwant Singh Vs. Jhannubai and others** reported in **1980 A.C.J. 126 (MP); Panna Lal Vs. Shri Chand Mal and others** reported in **1980 A.C.J. 233; Sumathy and others Vs. Raghavan and others** reported in **1997 ACJ 260 (Kerala); Mathew Thankachan Vs. V.G. Mahoharan and others** reported in **1999 ACJ 275 (Kerala)**, it is contended that the completion of sale of motor vehicle is not dependent on the transfer of its registration certificate. It has to be decided in terms of Sale of Goods Act, 1930 which deals with as to how a contract of sale is to be made when there is an offer to buy or sell goods for a price and acceptance of such offer, it can be said that a contract of sale is made as contemplated under sub-section(1), therefore, the essential pre-requisites for a contract of sale between two persons are the offer to buy or sell goods for a price by one person and acceptance of such offer by another person. Sub-section (2) of Section 5 provides that a contract for sale may be made in writing or by word of mouth or partly in writing and partly by word of mouth or may be implied from the conduct of the parties and it is settled position that the sale of motor cycle is governed by the Sale of Goods Act, 1930 and is complete when the consideration is paid and the vehicle is delivered irrespective of the fact that the sale

(35)

has been registered with the Registering Authority or not. Payment of price and delivery of the vehicle make the transaction complete and the title will pass to the purchaser under the provisions of Sale of Goods Act. For transfer of ownership of a motor vehicle mutation of certificate is not necessary. Obligation to register the vehicle is for controlling and regulating the movements of the vehicle by the authorities under the Act. The vehicle can be sold and purchased without following the procedure prescribed in Section 31 of the Act.

6) On the other hand, learned counsel for respondent No.5/non-applicant No.1 submitted that the onus of proving that the non-applicant No.2 had transferred the motor cycle to non-applicant No.1 is on the non-applicant No.2. Non-applicant No.1 is a Carpenter, whereas, non-applicant No.2 is a saw mill owner and deals in timber. Non-applicant No.1 had business transactions with him and on the date of incident, non-applicant No.2 had sent the non-applicant No.1 in connection with his work in his motorcycle when the unfortunate accident occurred. Non-applicant No.2 continued to be the registered owner of the motorcycle till May, 2005 and no document about the transfer has been produced by the non-applicant No.2. Non-applicant No.2 has claimed that consideration of motorcycle was paid through Ashok Kumar, however, Ashok Kumar has not been examined and in these circumstances the stand of non-applicant No.2 that he had in fact transferred the vehicle to non-applicant No.1 is not established.

7) So far as the principles of law laid down in the various judgments cited by learned counsel for non-applicant No.2 and which have been reproduced in foregoing paragraphs, the same has not been controverted, as the law as propounded in these judgments is the settled law. The only question to be considered for deciding this appeal is whether on the basis of material available on record the non-applicant No.2 has been able to establish that the ownership of offending vehicle stood transferred to the non-applicant No.1 in accordance with the Section 5 of the Sale of Goods Act?

(36)

8) The tribunal considering the admission of non-applicant No.2 in his deposition that no deed was executed at the time of transfer and also considering the fact that the transaction was finalized in the presence of Ashok Kumar, who has paid the consideration, but Ashok Kumar has not been examined as a witness by the non-applicant No.2 who could have confirmed the sale, has drawn adverse inference against the non-applicant No.2 that in fact no transaction was made in presence of said Ashok Kumar. Since the non-applicant No.2 had pleaded that he was not the owner of the vehicle on the date of accident because he had sold the vehicle to the non-applicant No.1, the onus to prove this pleading was that of the non-applicant No.2, however, non-applicant No.2 has failed to discharge the onus of proving the sale of vehicle and therefore, the non-applicant No.2 was also liable for satisfying the award along with non-applicant No.1 who was driving the vehicle.

9) The above finding of the claims tribunal is based on the evidence available on record and particularly on the statement of non-applicant No.2 himself and therefore, there is no illegality or infirmity in the conclusion of the learned claims tribunal that the non-applicant No.2 has failed to prove that he had transferred the vehicle to non-applicant No.1.

10) In the result, there is no illegality or infirmity in the impugned award, the appeal being devoid of substance deserves to be dismissed and the same is hereby dismissed. No order as to costs.

Sd/-
Dhirendra Mishra
Judge

Roshan/-